

HOUSE LEGISLATION

Support HB 3063 by Rep. Kacal; Sponsor: Chairman Perry

Status: Effective 9/1/17

HB 3063 relates to a farmer's agricultural lien and seeks to address the following:

- Expands ag lien eligibility to include:
 1. Farmers who have stored their crop with a facility or purchaser, but the crop is not under contract with a purchaser (open storage); and
 2. Farmers who have stored their crop with licensed and bonded warehouses.
- Clarifies that a farmer's statutory agricultural lien does not have priority over a lien held by a storage facility's lender on grain the facility has paid for (company owned).
- Clarifies that contract purchasers operating under marketing agreements, can continue to pledge the crop to their lender to process and market the crop.
- In summary, Ch. 70 of the Property Code would allow farmers to obtain a lien on their own crop, whether in possession of a storage facility or a purchaser, until payment is received:
 - the lien attaches on the date of the first delivery of the crop;
 - the lien is perfected upon attachment and remains perfected if a UCC Financing Statement is filed within 90 days of last delivery of the crop; and
 - the perfected lien has priority over a conflicting security interest, with a few exceptions.

Background

Farmers often entrust their crops to elevators, warehouses, processing plants, brokers or other buyers upon harvest. They either keep the crop in storage until the market is right to sell, or contract it to a purchaser to receive payment by an established date. Often times farmer-owned crops are held in storage and are comingled, or mixed in the same elevator, as crops that have been sold or are contracted to be sold to purchasers. Many times the purchaser is the same company that owns and operates the facility.

Unfortunately, while the crops are held in storage, the facility can go into bankruptcy and the farmers can be left unpaid. This can be devastating to farmers who have their crops in open storage, as well as the farmers who have not yet been paid for their crop by their contract purchaser. Often these farmers are left "in line" for payment, at times behind the elevator's lenders who are allowed to obtain superior rights to the farmers crop.

Current law gives farmers the ability to obtain an agricultural lien to protect themselves in these situations. Subchapter E in Section 70 of the Property Code gives unpaid farmers who have crops under contract with, and in possession of their contract purchaser, the opportunity to obtain a lien. As long as the farmer has filed a UCC financing statement, their lien is perfected and has priority over a conflicting lien, excluding that of the farmer's lender. This lien discharges when the farmer has been paid for his crop.

(over)

Legislative Issue

The scope of the law, however, remains too narrow. Farmers who take grain to a licensed and bonded warehouse are not eligible to obtain an agricultural lien. The same is true for farmers who have grain in open storage, meaning their grain is not yet under contract, but is being held in storage to be purchased at a later date.

Currently, farmers with grain at a licensed and bonded storage facility and farmers who have non-contracted grain in storage are viewed as unsecured creditors of their own crop. The lenders of the storage facility may be entitled to a first lien on the farmers' crop.

The Dorchester Grain failure of 2009 proved that existing regulatory protections surrounding licensed and bonded warehouses are not sufficient. Once bankruptcy was declared in Dorchester, a significant portion of openly stored, farmer-owned grain was used to pay Dorchester's lenders rather than the farmers.

When farmers deposit their crops into a facility, whether the crop is held in storage or under contract with a purchaser, the farmers should have the ability to have first lien on the crops they produced until they are paid.

Highlights

- The purpose of this legislation is to provide farmers better protections in getting paid for the crops they produce.
- Non-contracted grain in storage is the farmer's property. Contracted grain that has not been paid for is the farmer's property. Not viewed as collateral of the facilities lenders.
- Licensed and bonded facilities, while usually secure, are not immune to failure.
- New language is added to clarify that an agricultural lien does not impact the use of marketing contract agreements. See Tex. Prop. Code § 70.4045 (d).
- Language from current statute is maintained so that banks that lend to farmers remain protected. See Tex. Prop. Code § 70.4045 (c) (1) (A).
- Language from current statute is maintained so that a buyer in ordinary course of business takes the crop free of a lien. See Tex. Prop. Code § 70.406 (a).
- An agricultural lien is not an indemnity program. No costs should be passed down to farmers as a result of the changes proposed.

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